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ORDER E-FILED ON 10/10/06

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
11

12 UNITED STATES OF AMERICA,)	No. CR-05-00812 RMW (HRL)
)	
13 Plaintiff,)	AMENDED STIPULATED INTERIM
)	PROTECTIVE ORDER
14 vs.)	
)	(MODIFIED BY THE COURT)
15 SUIBIN ZHANG,)	
)	
16 Defendant.)	
)	

17
18 WHEREAS during the course of discovery in the above-captioned criminal case the
19 United States and defendant Suibin Zhang may be required to produce documentation and items
20 containing information that they consider to be confidential and proprietary information or “trade
21 secret” information (within the meaning of 18 U.S.C. § 1839(3)) belonging to Marvell, Inc.
22 (Marvell), and others in the case of the United States, or belonging to other entities and obtained
23 through service of subpoena, in the case of the defendant, Suibin Zhang; and

24 WHEREAS the United States and Suibin Zhang deem it appropriate to provide for the
25 protection of such information, with the understanding that nothing in this stipulated interim
26 protective order constitutes any agreement or creates any presumption regarding whether or not

1 the specific information is, in fact, confidential and proprietary, or a trade secret;

2 IT IS HEREBY STIPULATED AND AGREED by and between the undersigned parties
3 and their respective counsel that the following definitions and procedures will govern the
4 designation and handling of material and other information produced by any party.

5 1. Definitions.

6 a. "Confidential Material" shall mean information that either the United States
7 or the defendant contends is a trade secret within the meaning of 18 U.S.C. § 1839(3).

8 b. "Discovery Material" shall mean all materials disclosed by any party during
9 discovery in this case.

10 c. The "Parties" shall refer to the United States and defendant Suibin Zhang.
11 Marvell, Broadcom Corporation (Broadcom), and Netgear, Inc. (Netgear) are not parties to this
12 action.

13 2. The United States and/or defendant Suibin Zhang may designate Discovery Material
14 as Confidential Material to the extent that this designation is supported by a good faith belief that
15 the information or material is in fact Confidential Material as defined in paragraph 1(a) above.
16 Whenever possible, the producing party shall indicate whether particular items of Discovery
17 Material are being designated as Confidential Material at the time that the Discovery Material is
18 produced. The producing party shall identify the information it has designated as Confidential
19 Material either by providing a list which identifies, by Bates stamp number, the pages that it has
20 designated Confidential Material, or by using a separate numbering system for those items that it
21 has designated as Confidential Material. All parties shall refrain from stamping the word
22 "CONFIDENTIAL" on individual pages or otherwise altering the appearance of any Confidential
23 Material (with the exception of adding Bates stamp numbers). Computer memory storage
24 materials such as diskettes, hard drives or other memory media containing Discovery Material
25 deemed by the producing party to contain Confidential Information may be labeled outside the
26 media as "CONFIDENTIAL."

1 3. Discovery Material that the United States has designated as Confidential Material
2 shall be kept at the office of the Federal Public Defender, counsel for defendant Suibin Zhang.
3 Discovery Material that the defendant has designated as Confidential Material shall be kept at the
4 office of the United States Attorney. Should Suibin Zhang be incarcerated pretrial in this or any
5 other matter, the Federal Public Defender may bring the Confidential Material to the Santa Clara
6 County Main Jail (or other facility in which Mr. Zhang is incarcerated) to enable the defendant to
7 examine this material, but the Federal Public Defender shall not leave any Confidential Material
8 with the defendant. In addition to the defendant and his counsel, Confidential Material produced
9 by the United States may be disclosed only to members of the Federal Public Defender's office,
10 to experts, and to interpreters assisting the defense. Confidential Material produced by Suibin
11 Zhang may be disclosed only to members of the United States Attorney's office or to members of
12 the Federal Bureau of Investigation who are working on this case, or to an expert retained
13 pursuant to ¶ 6 of this agreement. The United States will NOT disclose any Confidential
14 Material produced by Suibin Zhang to Marvell, Broadcom or Netgear, their representatives, or
15 any other third party, unless approved by the Court, pursuant to ¶ 4 of this agreement. All such
16 material shall be used solely for the purpose of preparing for and conducting pretrial, trial and
17 appellate proceedings in this case, and shall not be used for the economic benefit of the defendant
18 or any third party, including Marvell, Broadcom or Netgear. Any motion that quotes directly
19 from any Confidential Material shall be filed UNDER SEAL. Any motion that includes exhibits
20 or attachments that contain Confidential Material need not be filed under seal, except that the
21 exhibits or attachments shall be filed under seal. The standard procedures for filing a document
22 under seal shall apply.

23 4. If either the United States or the defendant wishes to disclose any Confidential
24 Material to anyone OTHER THAN an expert or any individual described in ¶ 3, counsel for the
25 party seeking disclosure shall provide written notice to the producing party. The producing party
26 shall have five (5) business days from the date it receives written notice to object to such

disclosure, in writing, for good cause. If the producing party objects, the party seeking disclosure shall have three (3) business days to respond. If no agreement is reached by the parties within three (3) additional business days, the producing party may apply to the Court for appropriate relief, with copies of such application being served on the other party. Any such application or supporting document shall be filed UNDER SEAL. **Absent a court order,** Neither the United States nor the defendant will disclose any document or the contents of any document described in this paragraph to any third party, including Marvell, Broadcom or Netgear and their representatives. Once the producing party has filed an application with the Court as set forth above, the party seeking disclosure will refrain from disclosing any Confidential Material to the individual until the objection has been resolved.

5. No person described in paragraphs 3 and 4, other than Suibin Zhang, Assistant Federal Public Defenders Nicholas Humy and Jay Rorty, and Assistant United States Attorneys David Callaway and Kyle Waldinger shall have access to any discovery that an opposing party has designated as Confidential Material until that person signs a copy of the attached “Acknowledgment of Stipulated Protective Order in United States v. Suibin Zhang CR 00812 RMW (HRL).” Once an individual has executed an Acknowledgment, it shall not be necessary to sign a separate Acknowledgment each time the person is given access to Confidential Material. With the exception of any Acknowledgment executed by an expert, a copy of each signed Acknowledgment shall be provided to the opposing party.

6. At such time as a party retains an expert or experts to assist in reviewing the Confidential Material and preparing for trial, the expert shall execute an Acknowledgment, signed under oath, stating that the affiant agrees to abide by the terms of this agreement, and that he or she is not: (1) a former or current employee of Marvell, Broadcom or Netgear; (2) currently under contract to Marvell, Broadcom or Netgear; (3) a direct competitor of Marvell, Broadcom or Netgear; (4) employed by a direct competitor of Marvell, Broadcom or Netgear; or (5) currently under contract to a direct competitor of Marvell, Broadcom or Netgear. The Acknowledgment

1 shall be submitted to the Court *in camera* and filed under seal. The opposing party will not be
2 provided with a copy of the Acknowledgment signed by the expert(s), and the identity of the
3 expert(s) shall not be disclosed to the opposing party except to the extent that such disclosure is
4 required by the Federal Rules of Criminal Procedure. However, should either party wish to retain
5 an expert who is: (1) a former or current employee of Marvell, Broadcom or Netgear; (2)
6 currently under contract to Marvell, Broadcom or Netgear; (3) a direct competitor of Marvell,
7 Broadcom or Netgear; (4) employed by a direct competitor of Marvell, Broadcom or Netgear; or
8 (5) currently under contract to a direct competitor of Marvell, Broadcom or Netgear, the party
9 wishing to retain the expert shall make an *ex parte in camera* submission to the Court, setting
10 forth the name of the proposed expert; the relationship of that expert to Marvell, Broadcom or
11 Netgear, or their competitors; and any other information the party wishes the Court to consider.
12 After reviewing these materials, the Court will determine whether: (1) the party is permitted to
13 retain the proposed expert and disclose Confidential Material to the expert, once the expert has
14 executed an Acknowledgment and that Acknowledgment has been filed under seal with the
15 Court; or (2) the Court requires the input of either the opposing party, or a third party (*i.e.*,
16 Marvell, Broadcom or Netgear), or both, before it can determine whether to permit disclosure of
17 Confidential Material to the proposed expert. In the latter case, the Court shall notify the party
18 seeking to retain the expert that it has the option of either withdrawing the expert's name from
19 consideration or notifying the opposing party and/or third party of the identity of the proposed
20 expert. In no event shall the Court disclose to the opposing party or any third party the identity of
21 the proposed expert, or the contents of the proposing party's *ex parte* submission, until the party
22 seeking to retain the expert has had an opportunity to withdraw the expert's name from
23 consideration. Nothing in this paragraph shall prevent the Court making further orders
24 concerning the proposed expert, as it deems appropriate, provided that the further orders do not
25 conflict with the above.

26 7. The recipient of any Confidential Material that is provided under this Stipulated

1 Interim Protective Order shall keep such information in a manner reasonably intended to prevent
2 the unauthorized disclosure of that material.

3 8. At the conclusion of the above-captioned case (including any post-trial proceedings
4 such as an appeal or habeas petition), counsel for Suibin Zhang agrees to either return or destroy
5 any Confidential Material produced by the United States, except as otherwise directed by the
6 Court. At the conclusion of the above-captioned case (including any post-trial proceedings such
7 as an appeal or habeas petition), the United States agrees to either return or destroy any
8 Confidential Material produced by defendant Suibin Zhang, except as otherwise directed by the
9 Court.

10 9. Nothing shall prevent any party from using the Confidential Material or from
11 referring to or reciting from any information contained in such Confidential Material in
12 connection with pleadings or motions filed in this case, provided that such materials shall be
13 filed UNDER SEAL and/or submitted *in camera*. The use of Confidential Material at trial or at
14 pre- or post-trial hearings will be resolved at or before the time of such trial or hearing.

15 10. Should a dispute arise as to the propriety of the designation of any Discovery
16 Material as Confidential Material, the objecting party shall notify opposing counsel in writing.
17 Such notice shall state objecting counsel's position regarding that matter. Within five (5)
18 business days of receiving such notice, opposing counsel shall respond to the notice in writing.
19 If, after five (5) business days from opposing counsel's response, the parties cannot resolve the
20 dispute, they may apply to the Court to do so. Any such dispute or the pendency of such motion
21 shall not be grounds for an objection to or refusal to permit discovery. During the pendency of
22 the dispute, and any Court resolution thereof, including an appeal of the Court's decision on such
23 motion, the discovery shall be treated as Confidential Material and shall be covered by this
24 Stipulated Interim Protective Order.

25 11. Marvell, Broadcom and Netgear are not parties to the above-captioned case. Where
26 this agreement requires service of notice on the opposing party, this requirement does not include

1 the service of notice on Marvell, Broadcom or Netgear.

2 12. By signing and agreeing to this Stipulated Interim Protective Order, no person shall
3 be deemed to have conceded that any material has been properly designated as Confidential
4 Material.

5 13. Nothing in this Stipulation shall prevent disclosure beyond the terms of this
6 Stipulation if both parties (*i.e.*, the United States and defendant Suibin Zhang) consent in writing
7 to such disclosure, or if such disclosure is ordered by the Court.

8 14. Nothing contained in this Stipulated Interim Protective Order shall preclude any
9 party from applying to the Court for further relief or modification.

10 IT IS SO STIPULATED.

11
12 Dated: September 22, 2006

_____/S/_____
NICHOLAS P. HUMY
Assistant Federal Public Defender

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14 Dated: September 22, 2006

_____/S/_____
JAY RORTY
Assistant Federal Public Defender

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17 Dated: September 22, 2006

_____/S/_____
DAVID CALLAWAY
Assistant United States Attorney

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19 Dated: September 22, 2006

_____/S/_____
KYLE WALDINGER
Assistant United States Attorney

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21
22 IT IS SO ORDERED.

23 Dated: October 10, 2006



THE HONORABLE HOWARD R. LLOYD
United States Magistrate Judge

**UNDER SEAL ACKNOWLEDGMENT BY EXPERT
OF STIPULATED INTERIM PROTECTIVE ORDER
IN UNITED STATES v. SUIBIN ZHANG, No. CR 05-00812 RMW (HRL)**

I, _____, hereby declare:

1. I have received a copy of the Stipulated Interim Protective Order entered into by the parties in the case of United States v. Suibin Zhang, No. CR 05-00812 RMW (HRL); I have read and understood the terms of said Order and agree to abide by them; and I hereby submit to the jurisdiction of the United States District Court for the Northern District of California for the purposes of enforcement of the terms of said Order.

2. I am not a former or current employee of Marvell, Inc. (Marvell); Broadcom Corporation (Broadcom); or Netgear, Inc. (Netgear).

3. I am not currently under contract to Marvell, Broadcom, or Netgear.

4. I am not a direct competitor of Marvell, Broadcom, or Netgear.

5. I am not employed by a direct competitor of Marvell, Broadcom, or Netgear.

6. I am not currently under contract to a direct competitor of Marvell, Broadcom, or Netgear.

I declare under penalty of perjury that the foregoing is true and correct, except for those matters stated on information and belief, and as to those matters, I am informed and believe them to be true. Executed this ____ day of _____, 200_, in the Northern District of California.

Signature

Street Address

City, State, Zip Code

Telephone Number